

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

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BERTRAM LOEB,

Plaintiff,

v.

BANK OF AMERICA, *et al.*

Defendants.

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Case No. 02-cv-3833

**JOINT PROPOSED DISCOVERY PLAN UNDER RULE 26(f)**

The parties hereby submit this Joint Proposed Discovery Plan pursuant to Fed. R. Civ. P. 26(f):

**Introduction.**

Defendants have moved to dismiss or to transfer venue to the United States District Court for the District of Maryland. Those motions ("Defendants' motions") are ripe and pending. To avoid potential confusion and waste of resources, the parties agree that discovery, and the foregoing deadlines, should begin upon the Court's resolution of Defendants' motions.

**I. Rule 26(a) Disclosures.**

Counsel anticipate completing the self-executing disclosures twenty-one (21) days after entry of any order resolving Defendants' motions which does not result in dismissal or transfer of this action ("entry of any Order").

**II. Discovery Subjects and Timetable for Discovery.**

- A. Counsel will each list the subjects of discovery in a separate pleading which will be filed subsequent to the exchange of initial disclosures under Rule 26(a).
- B. Counsel also agree upon the following discovery timetable:
  - (a) Close of all discovery: six (6) months after entry of any Order;
  - (b) Close of fact discovery: five (5) months after entry of any Order;

- (c) Expert reports due four (4) months after entry of any Order; Rebuttal reports due five (5) months after entry of any Order; Depositions of all experts to be completed within six (6) months after entry of any Order;
- (d) Dispositive motions due: seven (7) months after entry of any Order;
- (e) Exchange of exhibits due: two (2) weeks before final pre-trial conference ("PTC");
- (f) Plaintiff's pre-trial memorandum due: thirty (30) days before final PTC;
- (g) **Defendants' pre-trial memorandum due: The parties request the Court's assistance in resolving a minor disagreement on this issue; Plaintiff believes that Defendants should submit their pre-trial memorandum simultaneously with Plaintiff's; Defendants would prefer to submit their memorandum one week later, i.e., twenty-one (21) days before the final PTC;**
- (h) All motions in limine due: thirty (30) days before final PTC;
- (i) All responses to motions in limine due: fifteen (15) days before final PTC;
- (j) A Daubert or Markman hearing shall be held: on an agreeable date approximately eight (8) months from the date of any Order; and
- (k) Final pre-trial conference to be held: on an agreeable date approximately nine (9) months from the date of any Order.

### **III. Change in Limitations on Discovery.**

Counsel agree that discovery should be conducted in accordance with the parameters set forth in the Federal Rules of Civil Procedure, subject to modification by agreement of the parties or by Court order, as necessary under the circumstances.

### **IV. Alternative Dispute Resolution.**

The parties propose to participate in a settlement conference to be scheduled to occur upon the close of all discovery.

**V. Other Issues.**

**A. Confidentiality Order**

The parties have had preliminary discussions about the prospect of entering into a Stipulated Confidentiality Order. The parties propose to defer presenting the Court with any Stipulated Confidentiality Order until promptly after the entry of any Order on Defendants' motions.

**B. Pro Hac Vice Motion**

The *pro hac vice* admission of Andrew Jay Graham and Geoffrey H. Genth, upon motion of Duane Morris, LLP and Melissa H. Maxman, Esquire, to appear on behalf of Defendants Herbert S. Garten, Esquire, Sheldon G. Dagurt, Esquire, and Fedder and Garten Professional Association (the "Law Firm Defendants") is currently pending before this Court. Counsel for Bank of America and Plaintiff do not oppose the admission of Mr. Graham and Mr. Genth.

Respectfully submitted,

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Dated: December 12, 2002